

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SCOTT D. DALESANDRO, et al.,
On behalf of themselves and
all others similarly situated,

Plaintiffs,

V.

**THE INTERNATIONAL PAPER
COMPANY,**

Defendant.

Case No.: C-1-01-109

Judge Susan J. Dlott

**PLAINTIFFS' MOTION FOR
HEARING ON ATTORNEY FEES**

MOTION

Plaintiffs respectfully request a hearing on their Motion (Doc # 45) and Supplemental Motion (Doc. #67) for Attorney Fees, Expenses, Interest and Incentive Awards.

MEMORANDUM IN SUPPORT

I. PROCEDURAL POSTURE

This ERISA class action was recently transferred from Judge Beckwith who certified the class and ruled in favor of Plaintiffs on March 21, 2003 (Doc. # 40). The only issues remaining are Plaintiffs' Motion (Doc # 45) for attorney fees, expenses, interest and incentive awards, and their Supplemental Motion (Doc. #67) updating the hours and expenses incurred since the initial motion. Final judgment has not been entered due to these pending motions that were originally briefed and submitted last October (Doc. #s 45, 49 & 53). Plaintiffs respectfully submit that a hearing will afford the Court the opportunity to be fully apprised of the nature of this case and the remaining issues, and will facilitate its final resolution.

II. SUMMARY of PLAINTIFFS' APPLICATIONS for FEES and EXPENSES

Plaintiffs seek the payment of attorney fees and expenses from Defendant to the Class pursuant to ERISA's fee-shift provision, in a lodestar amount enhanced by a 1.5 multiplier. Plaintiffs' counsel seek attorney fees in the amount of 25% of the common fund created in this case, to be paid by the Class pursuant to their contingent fee contract and the common fund doctrine. Plaintiff have submitted legal arguments and factual evidence to show that the lodestar amount and multiplier sought by Plaintiffs from Defendant to be paid to the Class, and the percentage of the common fund sought by Plaintiffs' Counsel to be paid by the Class, are within the ranges established in the Sixth and other Circuits, and in the District Courts in Ohio.

Defendant does not dispute that the fees and expenses shifted pursuant to the ERISA statute are made by Defendant to the Class and become part of the Class' damages with their recovery of benefits. Moreover, Defendant does not oppose Class Counsel's application to receive 25% of the common fund of class damages as attorney fees from the Plaintiff Class.

Defendant has, however, waged a scathing and wholesale war against Plaintiffs' counsel and their fee applications and opposed the amount sought from it for the Class under the lodestar and multiplier analyses.

Plaintiffs submit that a hearing on these issues will assist the Court in its understanding of this newly transferred case, will facilitate the resolution of the remaining issues, and will move the case toward a long awaited final judgment entry on a merits decision that was entered in March of 2003. Plaintiffs have not yet filed their reply memorandum to the latest opposition filed by Defendant due to the parties' continuing efforts at resolving the case through mediation, but will do so by mid November.

Accordingly, Plaintiffs respectfully request the Court to set a hearing as soon as practicable after November 15, 2004.

III. CONCLUSION

The United States Supreme Court has cautioned that, “[a] request for attorney’s fees should not result in a second major litigation.”¹ The district court has wide discretion in determining the amount of the fee award, and Plaintiffs respectfully request a hearing on their original and supplemental motions for attorney fees, expenses, interest and incentive awards to assist the Court in making those determinations and facilitate the entry of final judgment.

Respectfully submitted,

s/Theresa L. Groh

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2004 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Michael Roberts, Esq., Graydon, Head & Ritchey LLP, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202, and I hereby certify that I have mailed the document via UPS Next Day Air to the following non CM/ECF participants: W. Carter Younger, Esq. and James P. McElligott, Esq., McGuire Woods, LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030.

s/Theresa L. Groh

Theresa L. Groh

¹ *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).